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### **Analysis of Enrolled Senate Bills 722-4**

**Topic:** Occupations; accounting  
**Sponsor:** Senators Bishop and Barcia  
**Co-Sponsors:** Senator Mike Goschka  
**Committees:** Senate Banking and Financial Institutions  
House Banking and Financial Services

**Date Introduced:** September 6, 2005

**Date Enrolled:** December 7, 2005

**Date of Analysis:** December 2, 2005

**Position:** The Department of Labor & Economic Growth supports the bill.

**Problem/Background:** Major changes are in store in the regulatory environment, as government, the profession, and the business community are taking the necessary steps to restore public confidence in the capital market system and the accounting profession that seems to have been shaken by recent developments at Enron, WorldCom and other public companies. Section 209 of the highly publicized Sarbanes-Oxley Act of 2002 prompted proposed legislation for the accounting profession in Michigan. Each licensing jurisdiction (the Michigan State Board of Accountancy) was required to conduct an independent review of the Act's provisions and make recommendations if necessary. Recommendations were based on the need to amend existing language pertaining to privately held businesses and to Certified Public Accountants who provide services to such businesses. Other Michigan-related topics were also recommended, and licensing fees and fines were increased to pay for additional government costs.

**Description of Bills:** The bills make amendments related to the accounting profession.

1. Senate Bill 722 amends the State License Fee Act to increase fees. The application processing fee for individuals and firms would increase from \$35 to \$100. The license to practice for individuals and firms would increase from \$40 to \$100 annually. Individual registration would increase from \$10 to \$25. The permit for temporary practice would increase from \$25 to \$100. A new peer review fee is established at \$100.
2. The bill also establishes the Accountancy Enforcement Fund. The money representing the increase in fees and the additional peer review fee are required to be deposited in the Fund. The purpose of the Fund is the enforcement of the Accountancy article of the Occupational Code regarding unlicensed activity, licensee and registrant disciplinary actions, and the peer review program conducted by the Board of Accountancy. The Fund would also reimburse the Attorney General for expenses incurred in conducting prosecutions of any unlicensed practice and disciplinary actions. A reasonable amount of money in the Fund may be used for expenses related to participation in national accounting organizations essential to the regulation of certified public accountants, as

determined by the department. Any unexpended balance in the Fund is carried forward to the next fiscal year.

3. Senate Bill 723 amends various sections of the Occupational Code. A licensee or registrant is included in the definition of "affected person" in the act who may maintain injunctive action to prevent unlicensed activity. One of the nine members of the Board of Accountancy is required to be a full-time instructor of accounting above the elementary level at an accredited college or university. The bill provides a \$25,000 administrative fine for improper use of the term "certified public accountant" and permits the department to conduct an investigation and proceed under Article 5 to enforce the restrictions on the use of the term.
4. The bill also establishes a peer review program for licensed firms and sole practitioners that perform attest services, including audits, reviews, and compilations that are relied on by third parties. The program would begin March 1, 2007 and would be established by rule. Notification by the firm or sole practitioners is required in the event of an adverse report or second modified peer review report.
5. The bill creates an from the disclosure prohibition for a licensee or person employed by a licensee from disclosing privileged and confidential information to appropriate law enforcement or government agencies when the licensee or person's knowledge forms a reasonable basis to believe that a client has committed a violation of law. Documents or records under the Accountancy article of the Code are exempt from disclosure under the Freedom of Information Act unless they are used as evidence in a contested case held by the department or as a basis for formal action by the department and until the action is resolved by a final order.
6. A person that violates the article or a rule is liable for an administrative fine payable to the department of not more than \$25,000 per violation. A licensee is required to report a final determination by a federal or state administrative agency or a judgment or conviction issued by a court within 30 days if the action involves dishonesty, fraud, or negligence.
7. Improper use of the term "certified public accountant" is reclassified from a misdemeanor to a felony and the penalties are substantially increased to \$25,000 and/or 5 years in jail. The attorney representing a political subdivision or the county prosecuting attorney may bring an action to enforce the protection of the term and the requirement that individuals be licensed or registered.
8. Senate Bill 724 amends the Code of Criminal Procedure by including unauthorized practice of public accounting in the list of felonies in Section 13p. The new felony is classified at the E level with a statutory maximum of 5 years.

#### **Arguments For:**

1. These amendments are in response to federal Sarbanes-Oxley Act mandates to states to review their own licensing programs to ensure that private firms are required to comply with standards similar to the provisions of the federal act. Thirty-seven other states currently require some kind of peer review process for their licensees, and several others are working on it.
2. The legislation is a good step toward providing stronger enforcement of unlicensed activity, which has been of concern to both licensees and the department.
3. They are designed to enforce better standards for CPA practice, and increase confidence in the CPA profession, which has suffered under recent corporate scandals.

They also attempt to make minimum revenue-neutral demands on government resources and small business compliance.

4. Because the department is required to take on additional duties, SB 722 is tie-barred to SB 723 to provide the resources necessary to carry out the mandated program. These additional fees closely approximate the increase in the Consumer Price Index since fees were last set in 1979.

**Arguments Against:**

1. The peer review function will add costs to CPAs who do not currently undergo peer review. Additional fees on Michigan businesses detract from Michigan's attractiveness as a state in which to do business.
2. The legislation adds additional requirements upon the department that must be supported with sufficient resources to implement.

**Opponents:** There was no opposition to the bills in committee.

**Fiscal/Economic Impact:**

**Budgetary:** Total costs are difficult to calculate:

*Enforcement:* No new staff is required in the Enforcement Division, however, Administrative Services' audit unit may need one additional staff person to assist with the peer review monitoring process. The Attorney General Department would be able to use funds from the Enforcement Fund to cover its costs of prosecuting cases against unlicensed practitioners or those working in public accounting without proper licensure.

*Licensing:* No new staffing is anticipated, if peer review reporting can be done electronically.

*Information Technology:* Technology costs are unknown at this time, as the process is being worked out within the department. If electronic filing is possible, additional programming costs will be incurred.

Costs to administer the Enforcement Fund are difficult to calculate: While under the jurisdiction of DLEG, there would be involvement by the Departments of Management and Budget, Treasury and the Attorney General Department.

**Revenue:** The department cannot anticipate the amount of revenue from new fines and penalties, nor the costs associated with obtaining those fees. In general only a small amount of the total amount of fines assessed are ever realized.

Estimates of the increase in licensing fees are \$1,075,000 annually. Peer review fees could reach another \$24,400 per year revenue for peer reviews, depending upon how many firms participate.

b) State of Michigan

c) Local Government

d) Other State Department: The Attorney General Department may incur new costs to prosecute unlicensed activity or other felony activities by public accounting practitioners affected

by these amendments.

No other anticipated budgetary impact, unless other state departments must pay for peer review for licensees.

**Other Pertinent Information:** MACPA testified in support of the bills in the House committee hearing. The Department supports the bills, and a member of the Michigan Board of Accountancy testified in support of the bills.

**Administrative Rules Impact:** Administrative rules will be necessary to fully implement the peer review program.